

90-264

Supreme Court, U.S.

FILED

AUG 3 1990

JOSEPH F. SPANIOLO, JR.
CLERK

No. _____

IN THE
SUPREME COURT OF
THE UNITED STATES

October Term, 1990

STANLEY STERNER, ET AL.,
Petitioner Pro Se

v.

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Fourth Circuit

PETITION FOR CERTIORARI

STANLEY STERNER
Petitioner Pro Se
1271 Dowell J. Cir.
Apt. No. 2
Winchester, Va. 22601
(703) 667-6246



QUESTIONS PRESENTED

1. Did the Fourth Circuit's decision to dismiss petitioner's appeal via 28 U.S.C. Section 1912, and Rule 38 Of The Federal Rules Of Appellate Procedure, conflict with the decisions of the Second Circuit.

2. Are 28 U.S.C. Section 1912, and Rule 38 Of The Federal Rules Of Appellate Procedure (FRAP 38) unconstitutional on their face and as applied by the Fourth Circuit and does its application conflict with the decisions of the Tenth Circuit.

LIST OF PARTIES

The petitioner, Stanley Sterner, is an individual with legal residence now at 1271 Dowell J. Cir. Apt. No. 2, Winchester, Va. 22601.

The respondent is the Commissioner of the Internal Revenue Service of the U.S. Department of Treasury and is sued in



his official capacity.



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OPINIONS BELOW

The per curiam opinion of the United States Court of Appeals for the Fourth Circuit, No 89-2842, decided on April 13, 1990 is not reported (App. A, p. 19). The Order of Dismissal and Declination of the U.S. Tax Court, Tax Ct. No. 708-89, was entered on August 8, 1989 and was not reported. (App. B, p. 21). The Memorandum Opinion of the U.S. Tax Court was filed July 20, 1989, T.C. Memo.1989-352 (App. C, p. 23). The opinion of the United States Court of Appeals for the Fourth Circuit denying petition for rehearing with suggestion for rehearing in banc was filed May 9, 1990, No. 89-2842 is not reported (App. D, p. 32). The opinion of the United States Court of Appeals for the Fourth Circuit, No. 88-2562, decided January



20, 1989, unpublished. (App. E, p. 33).

JURISDICTION

The Petitioner seeks review of the judgment of the Fourth Circuit Court of Appeals, No. 89-2842, decided April 13, 1990 (App. A, p. 19) (unpublished).

Petitioner's petition for rehearing with suggestion for rehearing in banc was denied May 9, 1990, No. 89-2842, unpublished (App. D, p. 32).

Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1), and Rule 17.1 (a) and (c) of the Rules of the Supreme Court of the United States.

CONSTITUTION, STATUTES AND REGULATIONS

The pertinent provisions of the First, Fifth, and Seventh Amendments of the Federal Constitution, 28 U.S.C. Section 1912 and Federal Rules of Appellate Procedure Rule 38 are



set forth in Appendix G, page 40.

STATEMENT OF THE CASE

On January 20, 1989 the Fourth Circuit Court of Appeals' opinion (App. E, p. 33) was decided and ruled that petitioner pay attorneys' fees and double costs in the amount of \$1500 to respondent, pursuant to 28 U.S.C. Sec. 1912 and FRAP 38, for filing a frivolous appeal.

On December 27, 1989 respondent filed Motion to Dismiss against petitioner, for failing to pay sanctions imposed by 4th Circuit in a prior appeal, and stated that petitioner should not be allowed to appeal unless he pays sanctions from prior appeal.

On January 4, 1990 petitioner filed a Response in Opposition to Motion to Dismiss and claimed, inter alia, that: a. 28 U.S.C. Sec.1912 and FRAP 38, were unconstitutional on their face and as ap-



piled by the 4th Circuit in petitioner's prior appeal; and b. that Fourth Circuit summarily awarded sanctions against petitioner, without requiring respondent to clearly show that the prior appeal was filed in bad faith, that the arguments were wholly without merit & that appeal was filed dilatorily.

The Fourth Circuit Court of Appeals dismissed petitioner's appeal on April 13, 1990, (App. A, p. 19) for seeking appellate review of a tax court order and offering the same arguments rejected as frivolous in a prior appeal. (Sterner v. Commissioner, No. 88-2562, 4th Cir. Jan 20, 1989). (App. E, p. 33) And for failing to pay sanctions from prior appeal. (No. 88-2562).

On April 24, 1990, petitioner filed Petition for Rehearing, with Suggestion for



Rehearing In Banc, in the U.S. Court of Appeals for the 4th Circuit. Petitioner claimed, inter alia, that: a) dismissal of appeal was premature and unconstitutional in that 4th Circuit failed to notify petitioner of his right to reinstate his appeal pending payment of sanctions from a prior appeal; and b) that 4th Circuit erroneously declared that petitioner's appeal contained many of the same arguments rejected as frivolous in prior appeal.

On May 9, 1990, the Fourth Circuit denied petitioner's Petition for Rehearing, with Suggestion for Rehearing In Banc. (App. D, p. 32)

ARGUMENT

1. The Fourth Circuit's decision to dismiss petitioner's appeal via 28 U.S.C. Section 1912, and Rule 38 Of The Federal Rules Of Appellate Procedure, (FRAP 38),



conflicts with the decisions of the Second Circuit.

The Fourth Circuit's decision (App. A, p. 19) to dismiss petitioner's appeal in the instant case, for failing to pay the the sanction award from a prior appeal, Sterner v. Commissioner, No. 88-2562 (4th Cir. Jan 20, 1989) (unpublished), (App. E, p. 33), conflicts with the decisions of the 2nd Cir., in that:

In Schiff v. Simon & Schuster, 766 F.2d 61, 62 (2nd Cir. 1985), the Second Circuit held that the staying of suits pending the payment of costs incurred in prior actions involving the same parties and the same (or similar) subject matter is now universal. In the instant case the 4th Circuit failed to stay the petitioner's appeal pending the payment of costs incurred in a prior appeal invol-



ving the same parties and the same (or similar) subject matter.

In Becker v. Adams Drug Co., Inc., 819 F.2d 32, 33 (2nd Cir. 1987) the Second Circuit allowed Becker to file at least ten (10) frivolous appeals from 1986-1987 before warning him that sanctions would be imposed and prevented appellant from filing papers in a particular case until he paid the sanctions imposed. The Second Circuit also notified the appellant that he would have to provide the court with adequate proof of compliance with the sanctions imposed in his present and prior cases before they would accept any further papers from him. In the instant case the 4th Circuit failed to warn, or notify, the petitioner of any opportunity to apply for reinstatement of his appeal, with proof of compliance with FRAP 38 sanctions, as was done in the



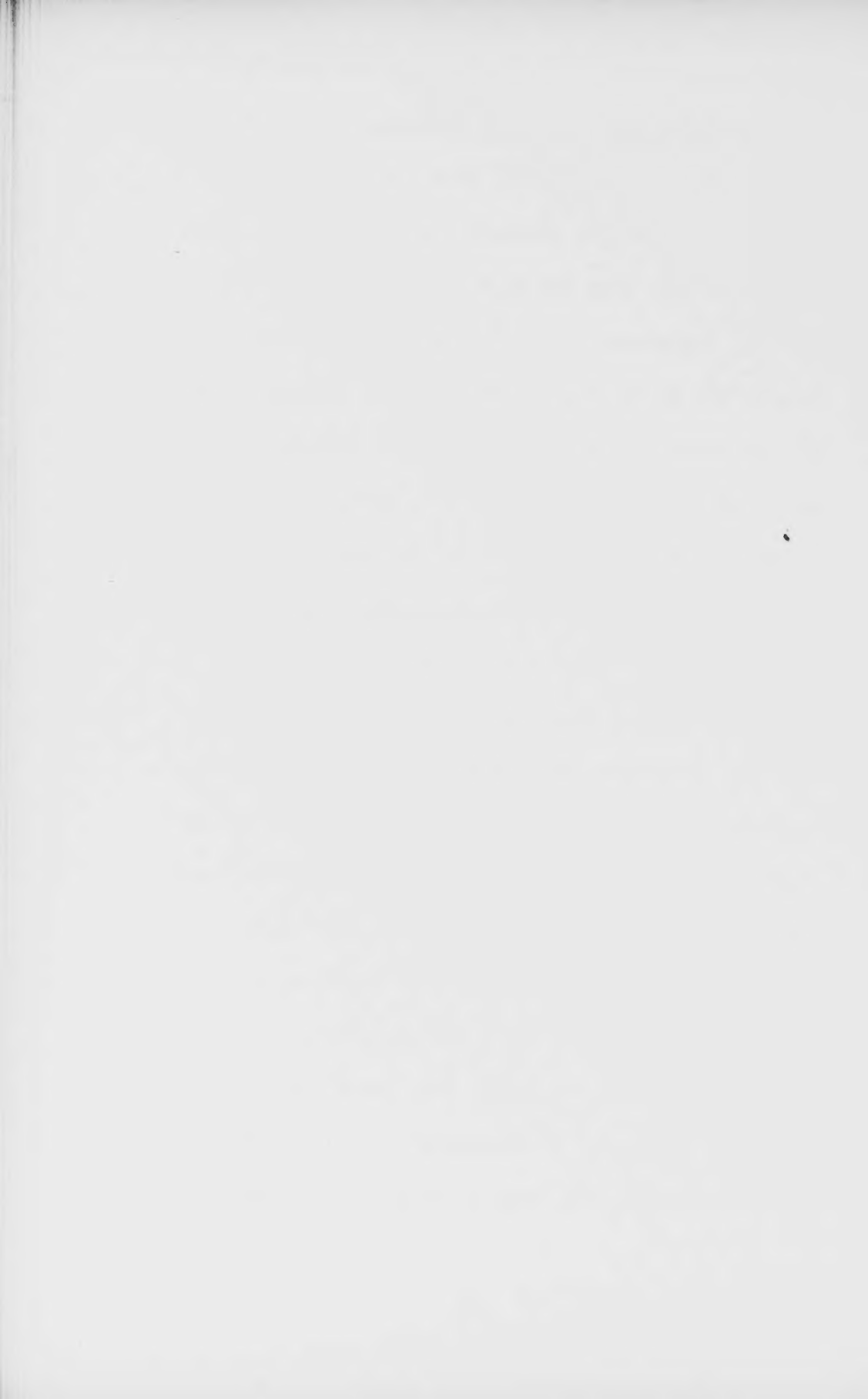
cases of Schliff, and Becker, supra.

And the 4th Circuit failed to give the petitioner any notice to apply for reinstatement of his appeal, despite the fact that the petitioner had only one prior appeal to the 4th Circuit resulting in a FRAP 38 sanction.

2. 28 U.S.C. Section 1912, and Rule 38 Of The Federal Rules Of Appellate Procedure are unconstitutional on their face and as applied by the Fourth Circuit and its application conflicts with the decisions of the Tenth Circuit. Said statute and rule violate the petitioner's First, Fifth and Seventh Amendment rights: a) to petition this Court for a redress of his grievances; b) to due process of law; and c) to trial by jury on the factual issue of damages, respectively.



In Autorama Corp. v. Stewart, 802 F.2d 1284 (10th Cir. 1986) the Tenth Circuit held that before damages pursuant to FED. R.APP.P. 38 and 28 U.S.C. Section 1912 can be imposed, the prevailing party is required to clearly show that appeal was filed in bad faith, that the arguments were wholly without merit, and that the appeal was filed as a delay tactic. In prior appeal, Sterner v. Commissioner, No. 88-2562, (4th Cir. Jan 20, 1989) (unpublished) the Fourth Circuit summarily awarded damages against the petitioner, without requiring the prevailing party to clearly show that the appeal was filed in bad faith, that the arguments were wholly without merit, and that the appeal was filed as a delay tactic, and did so without a trial by jury on the factual issues of damages, willfulness, and badfaith. It was a blatant abuse of



discretion and power by the 4th Circuit to award damages against the petitioner for exercising his natural and fundamental rights to pursue his First Amendment rights to petition and appeal to the 4th Circuit for a redress of his grievances.

Further the petitioner's First Amendment right to appeal his case to the 4th Circuit Court has been unfairly and prematurely dismissed via the abuse of power and discretion of the 4th Circuit Court in the application of FRAP 38 sanctions.

In addition, in the current case sanctions under Rule 38 Of The Federal Rules Of Appellate Procedure were not requested by the respondents, or imposed by the 4th Circuit, despite the court's declaration that petitioner's current appeal was frivolous and contained many of the same arguments rejected as frivolous in prior



appeal, Sterner v. Commissioner, No. 88-2562, (4th Cir. Jan 20, 1989) (unpublished). This clearly demonstrates how arbitrary, unfair, and abusive the 4th Circuit is with respect to its power and discretion in the application of FRAP 38 sanctions against the petitioner.

CONCLUSION

For these reasons the petition for writ of certiorari should be granted.

This Court and its predecessors failed to declare the Korean War and Vietnam War unconstitutional and thus have allowed the victims of these illegal wars to go uncompensated and the perpetrators unpunished. You and your predecessors have failed to declare the income tax laws unconstitutionally complicated, vague and ambiguous and thus not only are the mass of taxpayers confused by it, but the IRS agents and now their Commis-

sloner, Fred Goldberg Jr. are stating that the tax laws are too complicated and that they and the public deserve an easier system. In view of the fact that you have given Federal Judges (as in the Missouri case involving Federal District Judge Russell G. Clark) the power to impose and increase taxes without the consent of the people or their-legislative representatives, you need to go a step further and simplify the Federal income tax system.

Dated this 2ND day of August, 1990.

Respectfully submitted,



Stanley Sterner
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Apartment No. 2
Winchester Va. 22601
(703) 667-6246



APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 89-2842

UNPUBLISHED

STANLEY STERNER
Petitioner-Appellant

v.

COMMISSIONER OF
INTERNAL REVENUE
Respondent-Appellee

Appeal from the United States Tax Court.
(Tax Ct. No. 708-89)

Submitted: February 16, 1990
Decided: April 13, 1990

Before SPROUSE and WILKINS, Circuit Judges,
and BUTZNER, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Stanley Sterner, Appellant Pro Se. Gary R. Allen, Gilbert Steven Rothenberg, David Michael Moore, UNITED STATES DEPARTMENT OF JUSTICE, Washington, D.C., for Appellee.

Unpublished opinions are not binding precedent in this circuit. See I.O.P. 36.5 and 36.6.

PER CURIAM:



Stanley Sterner appeals from a tax court decision upholding the Commissioner's deficiency determination for tax year 1985 and imposing sanctions under 26 U.S.C. Sec. 6673 for maintaining a frivolous action. The Commissioner has moved to dismiss the appeal based on Sterner's failure to pay \$1,500 in costs and attorney's fees awarded by this Court in a prior appeal. Sterner v. Commissioner, No. 88-2562(4th Cir. Jan 20, 1989)(unpublished).

In No. 88-2562, this Court found Sterner's appeal from a prior tax court decision upholding a deficiency determination and imposing sanctions to be frivolous & imposed sanctions on appeal under Fed. R.App. 38 and 28 U.S.C. Sec. 1912. Without having paid those sanctions, Sterner again seeks appellate review of a tax court order and offers many of the same



arguments rejected as frivolous in No. 88-2562. The Commissioner's motion to dismiss this frivolous appeal based on Sterner's failure to pay the sanction award is well taken, and we grant it. See Schliff v. Simon & Schuster, 766 F.2d 61, 62 (2nd Cir. 1985); see also Stelly v. Commissioner, 804 F.2d 868, 871 (5th Cir. 1986).

MOTION TO DISMISS GRANTED

APPENDIX B

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

STANLEY STERNER, Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 708-89.

Entered: August 8, 1989

ORDER OF DISMISSAL AND DECISION

On February 27, 1989, respondent filed a Motion To Dismiss For Failure To State



A Claim For Relief And For Damages Under I.R.C. Section 6673. Petitioner filed his Motion To Dismiss, Motion For Definite Statement And Motion To Strike, On March 31, 1989. Pursuant to our opinion, T.C. Memo. 1989-352, it is hereby, ORDERED that respondent's Motion To Dismiss For Failure To State A Claim For Relief And For Damages Under I.R.C. Section 6673, filed February 27, 1989, is hereby granted. It is further ORDERED that petitioner's Motion To Dismiss, Motion For Definite Statement And Motion To Strike, On March 31, 1989, are hereby denied. It is further ORDERED AND DECIDED (1) that there is a deficiency in and additions to petitioner's Federal income tax for 1985 as follows: Deficiency \$7,077.00, Additions to Tax section 6651(a)(1) \$769.75; sec-



tion 6653(a)(1) \$353.85; section 6653(a) (2), 50% of the interest payable with respect to the portion of the underpayment attributable to negligence or intentional disregard of rules and regulations; section 6654 \$119.03. (2) That damages are awarded to the United States against petitioner in the amount of \$5,000, pursuant to section 6673.

By Special Trial Judge, Joan Seltz Pate.

APPENDIX C

T.C.MEMO. 1989-352

UNITED STATES TAX COURT

STANLEY STERNER, Petitioner V.
COMMISSIONER OF INTERNAL REVENUE,
Respondent

Docket No. 708-89 Filed July 20, 1989.

Stanley Sterner, pro se.

Warren P. Simonsen, for the respondent.

MEMORANDUM OPINION

PATE, Special Trial Judge: This case is before the Court on respondent's Motion



To Dismiss For Failure To State A claim For Relief And For Damages Under I.R.C. section 6673 (Unless otherwise specified, all section references are to the Internal Revenue Code of 1954, as amended and in effect for the year in issue, and all rule references are to the Tax Court Rules of Practice and Procedure.), filed on February 27, 1989. Petitioner filed his Notice Of Objection; Motion to Dismiss; Motion For More Definite Statement And Motion To Strike on March 31, 1989.

In a notice of deficiency dated October 14, 1988, respondent determined the following deficiency in and additions to petitioner's 1985 Federal income tax.

Deficiency in and additions to petitioner's Federal income tax for 1985 as follows: Deficiency \$7,077.00, Additions



to Tax section 6651(a)(1) \$769.75; section 6653(a)(1) \$353.85; section 6653(a)(2), 50% of the interest payable with respect to the portion of the underpayment attributable to negligence or intentional disregard of rules and regulations; section 6654 \$119.03.

Petitioner did not file an income tax return for 1985. The deficiency shown on the notice of deficiency arises from respondent's determination that petitioner had wage income of \$29,212 and interest income of \$5,158.

Petitioner filed a timely petition with this Court on January 11, 1989. In his petition he claims, inter alia, that:

1. Respondent failed to prepare and file petitioner's tax return;
2. Respondent failed to determine a deficiency before issuing the notice of deficiency and, therefore, the notice of deficiency is



invalid; 3. This Court lacks jurisdiction to hear this case because the notice of deficiency fails to state that respondent has examined petitioner's return and determined a deficiency; 4. Petitioner was not required to prepare and file a Federal income tax return; 5. Requiring petitioner to file a return violates his Fifth Amendment privilege not to be a witness against himself; 6. Section 301.6211-(a), Proced. and Admin. Regs., regarding deficiencies in cases where a taxpayer has not filed a return is unconstitutional; 7. Petitioner should not be penalized for his failure to file a return because the tax laws and rules are too complicated; 8. The Sixteenth Amendment is unconstitutional on its face and in its application; and 9. Respondent violated petitioner's 'other rights.'

Further, in objecting to respondent's motion for damages under section 6673, petitioner claims that respondent maliciously, intentionally, willfully, in conscious disregard of petitioner's rights and without a showing of facts or evidence, alleged that petitioner instituted these proceedings primarily for delay and to protest paying income taxes. He claims that section 6673 violates his rights to petition this Court for the redress of his grievances and violates his right to trial by jury.

Petitioner previously filed a petition with this Court in which he challenged respondent's determination with regard to 1981, 1982, 1983 and 1984 on the very same grounds as he does in this case. This Court, in an Order of Dismissal and Decision entered on March 15, 1988, granted respondent's motion to dismiss for



failure to state a claim in that case (Docket No. 39457-87). We therein considered each and every one of the above allegations of error and decided that none of them constituted a claim upon which this Court could grant relief. Moreover, in an unpublished opinion decided January 20, 1989, the United States Court of Appeals for the Fourth Circuit affirmed our decision, finding that 'Sterner's arguments are manifestly frivolous.' In addition, the Fourth Circuit awarded respondent attorney's fees & double costs.

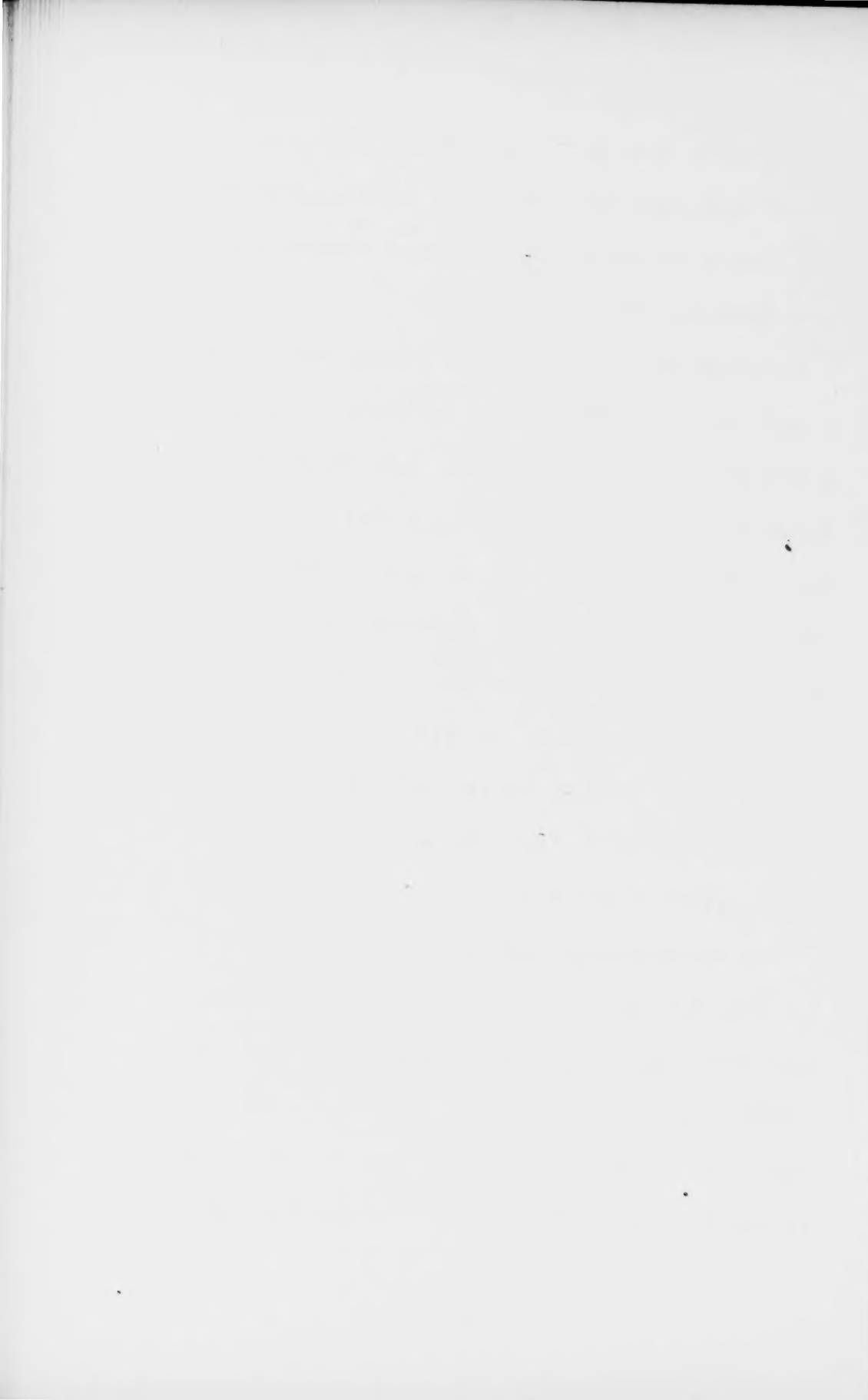
Rule 34(b)(4) provides that a petition filed in this Court shall contain clear & concise assignments of each and every error which petitioner alleges to have been committed by respondent in the determination of the deficiency & additions to tax in dispute. Rule 34(b)(5) further pro-



vides that the petition shall contain clear and concise lettered statements of the facts on which petitioner bases the assignments of error.

Rule 40 provides that a party may file a motion to dismiss for failure to state a claim upon which relief can be granted. Generally, we may dismiss a petition for failure to state a claim upon respondent's motion when it appears beyond doubt that petitioner can prove no set of facts in support of his claim which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46; Price v. Moody, 677 F.2d 676, 677 (8th Cir. 1982).

The determinations made by respondent in his notice of deficiency are presumed correct. Welch v. Helvering, 290 U.S. 111 (1933); Rule 142(a). In addition, any issue not raised in the pleadings is deemed conceded. Rule 34(b)(4); Jarvis v. Com-



missioner, 78 T.C. 646 (1982); Gordon v. Commissioner, 73 T.C. 736, 739 (1980).

It is clear that petitioner has not alleged any facts which show error in respondent's determination. Moreover, as stated earlier, the legal arguments put forth by petitioner previously have been found to be frivolous by this Court and by the Fourth Circuit. We find no need to repeat those legal arguments again. We incorporate them by this reference. Petitioner is already well aware of our reasoning. To the extent that petitioner has raised arguments in addition to those he raised last time, we have considered them so lacking in merit that we decline to discuss them further. Because petitioner has not raised any justiciable facts or issues in his petition, we grant respondent's motion to dismiss. See Klein

v. Commissioner, 45 T.C. 308 (1965);
Goldsmith v. Commissioner, 31 T.C. 56
(1958).

With regard to respondent's motion for an award of damages under section 6673, the record in this case establishes that petitioner had no interest in disputing either the deficiency or the additions to tax determined by respondent. Petitioner raised only his tired, discredited arguments. Moreover, despite the fact that our decision in his prior case was affirmed by the Fourth Circuit on January 20, 1989, petitioner filed a Notice of Objection to respondent's motion in this case on March 31, 1989, again reciting the arguments which both Courts rejected less than six weeks earlier. Based on these facts, we find that petitioner's claims are frivolous and that he maintained this proceeding primarily



for delay. Accordingly, we award damages to the United States in the amount of \$5,000. Coulter v. Commissioner, 82 T.C. 580 (1984); Abrams v. Commissioner, 82 T.C. 403 (1984).

An appropriate order of dismissal and decision will be entered.

APPENDIX D

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

NO. 89-2842

FILED MAY 9, 1990

STANLEY STERNER
Petitioner-Appellant

V.

COMMISSIONER OF
INTERNAL REVENUE
Respondent-Appellee

On Petition for Rehearing with Suggestion
for Rehearing In Banc

The appellant's petition for rehearing
with suggestion for rehearing in banc



were submitted to this Court. As no member of this Court or the panel requested a poll on the suggestion for rehearing in banc, and As the panel considered the petition for rehearing and is of the opinion that it should be denied, IT IS ORDERED that the petition for rehearing with suggestion for rehearing in banc are denied. Entered at the direction of Judge Wilkins with the concurrence of Judge Sprouse and Judge Butzner.

FOR THE COURT,
JOHN M. GREACEN
CLERK

APPENDIX E

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 88-2562

STANLEY STERNER
Petitioner-Appellant

v.

COMMISSIONER OF
INTERNAL REVENUE
Respondent-Appellee



Appeal from the United States Tax Court.
Chief Judge Samuel B. Sterrett. (Tax Ct.
No. 39457-87)

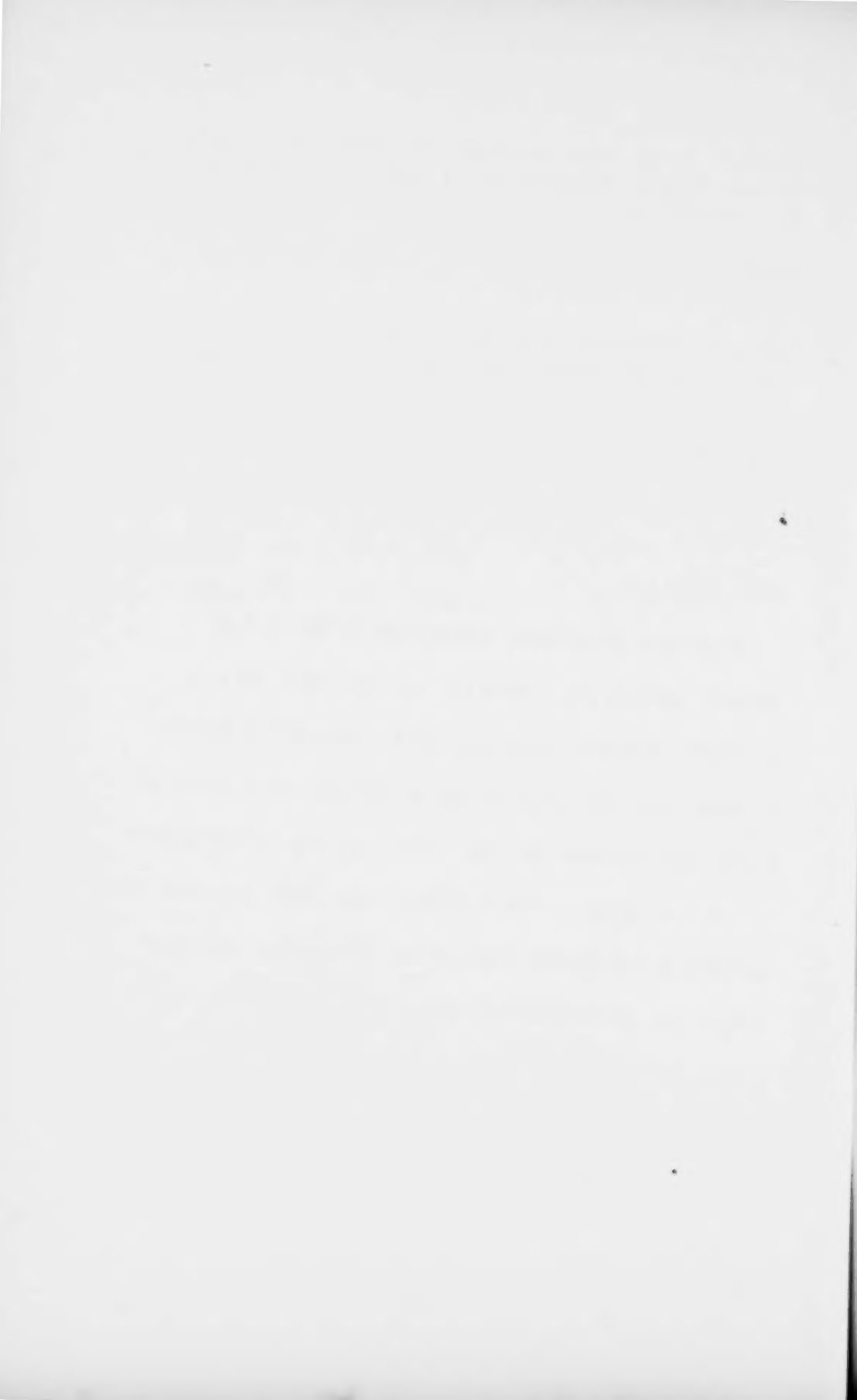
Submitted: November 28, 1988 Decided:
January 20, 1989

Before SPROUSE and WILKINS, Circuit Judges,
and BUTZNER, Senior Circuit Judge.

Stanley Sterner, Appellant Pro Se. William
Shepard Rose, Jr., Bruce Raleigh
Ellisen, Gary R. Allen, William F. Nelson
(U.S. DEPARTMENT OF JUSTICE) for Appellee.

PER CURIAM:

Stanley Sterner appeals from a tax
court decision upholding an IRS deficiency
determination and imposing sanctions
for maintaining a frivolous action.
Sterner forwards the following arguments
in this Court: (1) that the IRS failed to
prepare returns for him, thereby rendering
its determination of deficiency void;
(11) that penalizing him for failing to
file tax returns is in violation of his
fifth amendment privilege not to be a



witness against himself; (iii) that he should have been afforded a jury trial; (iv) that the Commissioner's motion to dismiss should have been denied; and (v) that the tax court's sanction was improper because he was simply exercising his constitutional right to litigate. We affirm.

Sterner's arguments are manifestly frivolous. The Commissioner is not obliged to prepare a return on a taxpayer's behalf before determining a deficiency.

Roat v. Commissioner, 847 F.2d 1379, 1381 (9th Cir. 1988). As to Sterner's fifth amendment claim, "[t]here is no constitutional right to refuse to file an income tax return." California v. Byers, 402 U.S. 424, 434 (1971). The tax court properly denied Sterner's request for a jury trial on the basis that there is no right to a jury trial in tax court. See



McCoy v. Commissioner, 696 F.2d 1234, 1237 (9th Cir. 1983). The court properly granted the Commissioner's motion to dismiss because Sterner failed to meet his burden to set forth facts showing that the Commissioner's deficiency determination was incorrect. See Taylor v. Commissioner, 771 F.2d 478, 480 (11th Cir. 1985). Contrary to Sterner's arguments, we find no unconstitutionality, either on its face or as applied, in the tax court rule governing motions to dismiss. Tax Ct. R. 34(b). Finally, we approve the tax court's imposition of the penalty provided for by 26 U.S.C. § 6673; Sterner has no constitutional right to litigate frivolous claims without being sanctioned. See Larsen v. Commissioner, 765 F.2d 939, 941 (9th Cir. 1985).

Finding this appeal frivolous, we award



the Commissioner attorneys' fees and double costs incurred on appeal. See 28 U.S.C. § 1912; Fed.R.App.P.38. The amount of \$1500 requested by the Commissioner in lieu of particularized fees and costs is approved."

We dispense with oral argument because this appeal is frivolous and affirm the tax court's judgment.

AFFIRM AND SANCTIONS IMPOSED.

"We note that this Court has awarded lump sum sanctions in Dixon v. Commissioner, No. 87-3528 (4th Cir. Dec. 15, 1987)(unpublished); Yoder v. Commissioner, No. 87-2072 (4th Cir. Nov. 27, 1987)(unpublished); Peebles v. Commissioner, No. 87-1053 (4th Cir. Sept. 23, 1987)(unpublished); Leining v. Commissioner, No. 86-1253 (4th Cir. July 21, 1987)(unpublished); United States v. Bowser, No. 86-1241 (4th Cir. April 22, 1987)(unpublished); United States v. Wissig, No. 86-1188 (4th Cir. Dec. 29, 1986)(unpublished); Chapman v. Egger, No. 85-2151 (4th Cir. Oct. 21, 1986)(unpublished); Jensen v. United States, No. 86-1504 (4th Cir. June 25, 1986)(unpublished), motion for accounting and cert. denied, 55 U.S.L.W. 3278 (U.S.



Oct. 20, 1986).

APPENDIX F

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

STANLEY STERNER,
Petitioner Pro Se

v. No. 89-2842

COMMISSIONER OF INTERNAL
REVENUE, Respondent

Filed: August 2, 1990

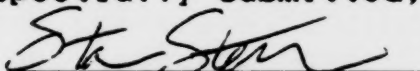
NOTICE OF PETITION FOR CERTIORARI
IN THE SUPREME COURT OF
THE UNITED STATES

Notice is hereby given that Stanley Sterner, Petitioner-Appellant above named, hereby petitions the Supreme Court of the United States from the judgment of the United States Court of Appeals for the Fourth Circuit decided April 13, 1990, rehearing denied by order dated May 9, 1990, affirming the judgment of the United States Tax Court dated August 8, 1989.



This Petition is taken pursuant to 28
U.S.C. §1254(1) and Rule
17.1(a) and (c) of the Rules of the
Supreme Court of the United States.
Dated this 2nd day of August, 1990

Respectfully submitted,



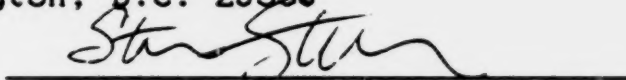
Stanley Sterner
Petitioner Pro Se
2544 Wilson Blvd.
Apartment No. 104
Winchester Va. 22601

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day
of August, 1990, the foregoing Notice of
Petition for Certiorari for the Peti-
tioner was mailed or delivered to:

Gary R. Allen
Chief, Appellate Section
Tax Division
Department of Justice
PO Box 502
Washington, DC 20044

Solicitor General
Department of Justice
Washington, D.C. 20530





Stanley Sterner

APPENDIX G

CONSTITUTION, STATUTES AND REGULATIONS

The Federal First Amendment to the
Constitution provides, in relevant part:

Congress shall make no law * * * prohibi-
ting * * * or abridging the * * * right of
the people * * * to petition the Govern-
ment for a redress of grievances.

The Federal Fifth Amendment to the
Constitution provides, in relevant part:

No person shall be * * * compelled in any
criminal case to be a witness against
himself, nor be deprived of life, liber-
ty, or property, without due process of
law * * * .

The Federal Seventh Amendment to
the Constitution provides:

In Suits at common law, where the value
in controversy shall exceed twenty dol-
lars, the right to trial by jury shall
be preserved, and no fact tried by a
jury shall be otherwise re-examined in
any Court of the United States, than
according to the rules of the common
law.

28 U.S.C. §1912 provides:

Where a judgment is affirmed by the Su-

preme Court or a court of appeals, the court in its discretion may adjudge to the prevailing party just damages for his delay, and single or double costs.

Federal Rules of Appellate Procedure

Rule 38 provides:

If a court of appeals shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee.